

MASSACHUSETTS CLIENTS' SECURITY BOARD
OF THE
SUPREME JUDICIAL COURT



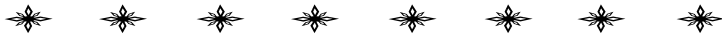
ANNUAL REPORT

TO THE

SUPREME JUDICIAL COURT

FISCAL YEAR 2006

SEPTEMBER 1, 2005 - AUGUST 31, 2006



CLIENTS' SECURITY BOARD

of the Supreme Judicial Court
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August 30, 2006

Dear Reader,

During fiscal 2006, the Board discharged its primary mission of deciding claims and reimbursing clients whose lawyers had stolen from them. This past year marked the ninth time in the Board's thirty-two year history that the total amount awarded to clients exceeded \$1.5 million. The actual amount for 2006 was \$1,653,027 representing an average award of \$39,358 to 42 claimants. The details on the year's activities appear on pages 7 through 13. I encourage you to review them.

Two matters deserve special attention: one involves the still-unpaid claims related to disciplined lawyer, Morris M. Goldings, and the other concerns an initiative by the Board to prevent losses.

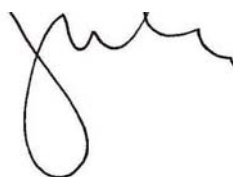
When I joined the Board in 2001, we received the very first claims related to Mr. Goldings' defalcations. Over the months and years since then, the Board received a total of seventeen claims in an aggregate amount that currently stands at \$8.2 million. Although the Board devoted substantial time during 2003 and 2004 to hearing the claims and making preliminary determinations, it was impossible to make awards because the Chapter 11 bankruptcy of Mr. Goldings' former firm had not yet made distributions from the substantial payment made by the firm's professional liability insurer. The Board did make two hardship advances and one hardship award to claimants who experienced particular economic pressures while waiting for the bankruptcy process to resolve itself. I am happy to report that earlier this year Mr. Goldings' former clients received their first distribution from the Creditors' Trustee in the bankruptcy proceeding and the second is scheduled for November or December. Our Board hopes to make partial awards sometime during December 2006 or early 2007. When you read my successor's letter next year, I hope you will learn that the Goldings' claimants have received their final payments from our fund bringing to a close one of the most challenging episodes in the Board's history.

Also, the Board felt it is important that the legal profession devise and support methods of reducing losses resulting from dishonest conduct in the practice of law, including the misappropriation of personal injury settlements. As we all know,

lawyers who steal comprise a minuscule fraction of the profession. Unfortunately, the victims of lawyer theft are often those most vulnerable to betrayal of their trust. We regularly see situations in personal injury cases where a dishonest lawyer will forge both the release and the settlement check, converting the proceeds and leading the client to believe that the claim is proceeding. In these cases, the client has no idea that there was a "settlement," and frequently that shocking discovery comes to the client too late: after the statute of limitations has run on the underlying claim and too late to pursue a UCC claim against a bank for cashing a settlement check with a forged endorsement. In the past three years, the CSB has awarded more than \$460,000 to claimants victimized by attorney concealment and theft of personal injury settlements. The Board found inspiration in Rule 7 I of the ABA Model Rules for Lawyers' Funds for Client Protection and began an initiative to bring a payee notification rule to Massachusetts. As you will see on page 5 of this Report, we have enjoyed some success thus far in advancing that initiative. However, we know there is much more work to be done before this hope becomes a reality.

This concludes my second - and final - report to you on the activities of the Board. My service on the Board and to the lawyers of the Commonwealth has been among the most satisfying of my career. I regret that we were not able to complete either the payment of the Goldings claims or the adoption of the payee notification rule before my term expired. However, because of the dedication of my fellow Board members and the commitment of the Supreme Judicial Court to the notion that clients can trust lawyers because the profession stands behind them, I am confident that the Client's Security Board will continue to uphold the highest goals of our profession.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John R. Gobel', with a large loop at the bottom left and a wavy line extending to the right.

John R. Gobel
Chair

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CLAIMS

2006 – NORMALCY ENHANCED WITH ACTIVISM

The Board never loses sight of its core mission: to reimburse clients whose lawyers have stolen from them. During this fiscal year, the Board considered and decided ninety-three claims, dismissing fifty-one and making awards totaling more than \$1.6 million to forty-two claimants. Those ninety-three claims represented a 15% increase over the eighty-one claims decided during 2005. With ninety-one new claims filed, the Board ended the year with 105 pending claims, a reduction of two from the prior year. Additional details appear in Table 1 on the next page.

In addition to performing its fundamental task of reimbursing clients, the Board also studied ways to minimize losses clients suffer at the hands of dishonest lawyers. Although Massachusetts does a commendable job of reimbursing claimants because of its policies of 1) 100% reimbursement of the proven client loss regardless of amount, 2) no statute of limitations on the filing of a claim, and 3) no limit on the amount awarded per individual lawyer, it has adopted only two of the six recommended ABA Client Protection Programs.¹ So, this year the Board launched a campaign to lead Massachusetts into the group of eleven states² that have adopted a payee notification rule by which insurers paying a settlement of a third-party liability claim are obliged to notify the claimant that the payment has been made to the claimant's lawyer or other representative.

The campaign began by meeting with the Commissioner of Insurance and soliciting the support of local bar associations and insurance company counsel. That led to an endorsement of adoption of the ABA Model Rule for Payee Notification by the House of Delegates of the 18,500-member Massachusetts Bar Association. It also led to considerably more publicity than the Board generally receives.³ The difficult task of implementation lies ahead.

¹ The six ABA Programs are: 1) Trust account overdraft notification; 2) Random audit of trust accounts; 3) Payee notification; 4) Disclosure of Professional Liability Insurance; 5) Mandatory fee arbitration; and, 6) Mediation of non-fee disputes. Massachusetts has adopted 1 and a version of 4.

² California, Connecticut, Delaware, Georgia, Hawaii, Kansas, Nevada, New Jersey, New York, Pennsylvania and Rhode Island.

³ See the list on p. 17.

**Table 1: Massachusetts Clients' Security Board
Claims Activity For Fiscal Years 1975-2006**

| Fiscal Year | Claims Filed | Claims Adjudicated | Cases Dismissed | Awards Made | Award Amounts | Defalcation Amounts | Claims Pending | Total \$\$ Pending Claims |
|--------------------|---------------------|---------------------------|------------------------|--------------------|----------------------|----------------------------|-----------------------|----------------------------------|
| 1975 | 14 | 7 | 2 | 5 | \$2,808.00 | \$3,300.00 | 0 | \$0 |
| 1976 | 36 | 28 | 18 | 10 | \$44,635.00 | \$102,874.61 | 1 | \$40,000.00 |
| 1977 | 21 | 18 | 13 | 5 | \$22,100.80 | \$29,929.00 | 2 | \$162,000.00 |
| 1978 | 71 | 34 | 14 | 20 | \$64,734.00 | \$198,218.18 | 0 | \$0.00 |
| 1979 | 53 | 39 | 29 | 10 | \$14,490.00 | \$50,010.66 | 1 | \$10,000.00 |
| 1980 | 126 | 60 | 38 | 22 | \$71,208.00 | \$210,564.42 | 4 | \$98,979.00 |
| 1981 | 42 | 126 | 61 | 65 | \$244,276.18 | \$509,383.34 | 5 | \$124,414.55 |
| 1982 | 30 | 29 | 9 | 20 | \$80,212.00 | \$147,383.38 | 11 | \$237,977.40 |
| 1983 | 35 | 40 | 7 | 33 | \$152,005.00 | \$292,295.54 | 6 | \$150,222.96 |
| 1984 | 45 | 42 | 17 | 25 | \$141,125.67 | \$252,035.43 | 22 | \$596,644.01 |
| 1985 | 46 | 34 | 12 | 22 | \$224,904.17 | \$366,320.22 | 33 | Not available |
| 1986 | 23 | 38 | 7 | 31 | \$214,810.75 | \$408,222.01 | 18 | \$435,610.54 |
| 1987 | 42 | 35 | 12 | 22 | \$503,776.00 | \$578,541.42 | 26 | \$913,757.20 |
| 1988 | 28 | 24 | 13 | 11 | \$267,954.24 | \$334,718.29 | 31 | \$879,523.90 |
| 1989 | 51 | 40 | 16 | 24 | \$146,720.06 | \$188,003.67 | 42 | \$1,185,536.06 |
| 1990 | 74 | 73 | 18 | 55 | \$759,025.23 | \$1,062,513.53 | 43 | \$1,684,305.12 |
| 1991 | 71 | 55 | 20 | 35 | \$624,592.42 | \$701,168.42 | 59 | \$2,385,442.46 |
| 1992 | 124 | 85 | 16 | 69 | \$968,894.77 | \$997,394.78 | 97 | \$3,876,569.75 |
| 1993 | 146 | 95 | 22 | 73 | \$1,111,181.93 | \$1,145,546.27 | 152 | \$5,923,733.42 |
| 1994 | 109 | 157 | 27 | 130 | \$1,203,911.62 | \$1,301,225.72 | 103 | \$6,388,646.51 |
| 1995 | 90 | 103 | 35 | 68 | \$1,602,217.70 | \$1,837,125.44 | 92 | \$4,941,427.08 |
| 1996 | 139 | 100 | 33 | 67 | \$1,696,870.13 | \$2,770,734.17 | 130 | \$6,704,036.56 |
| 1997 | 81 | 113 | 30 | 83 | \$2,058,900.92 | \$2,348,443.15 | 100 | \$6,011,390.39 |
| 1998 | 119 | 102 | 46 | 56 | \$1,254,229.91 | \$1,313,307.70 | 117 | \$4,896,354.03 |
| 1999 | 80 | 98 | 32 | 66 | \$2,119,675.47 | \$2,512,843.05 | 103 | \$3,978,062.06 |
| 2000 | 83 | 108 | 22 | 86 | \$2,744,848.83 | \$2,812,926.57 | 78 | \$3,175,277.78 |
| 2001 | 119 | 70 | 15 | 55 | \$1,963,555.27 | \$1,963,555.27 | 125 | \$5,766,860.34 |
| 2002 | 82 | 94 | 25 | 69 | \$1,066,379.91 | \$1,083,745.75 | 115 | \$10,935,665.79 |
| 2003 | 116 | 56 | 11 | 45 | \$1,055,477.00 | \$1,147,876.90 | 176 | \$14,527,530.07 |
| 2004 | 90 | 159 | 58 | 99 | \$2,412,597.49 | \$2,449,947.49 | 107 | \$12,526,853.85 |
| 2005 | 81 | 81 | 26 | 55 | \$2,203,527.19 | \$2,202,420.94 | 107 | \$17,098,832.30 |
| 2006 | 91 | 93 | 51 | 42 | \$1,653,026.91 | \$1,703,526.91 | 105 | \$17,163,606.51 |

ACKNOWLEDGEMENTS

To the wonderful staff of ... and the Clients' Security Board. A million thanks, and a sincere wish that god sends just as many - and more blessings. (CSB-2005-062, 10/25/2005)

Would just like to thank every one concerned for such speedy results. This was a lot of money to me. Thanks again. (CSB-2006-13, May 19, 2006)

Adam, thanks again for all of your help. You are especially kind to assist [my brother]. We have all made great strides to mend our relationship, the money was the icing on the cake. As I said before it was not enough to change our lives, just lighten the load a bit. (CSB-2005-38, May 18, 2006)

DISPOSITION OF CLAIMS

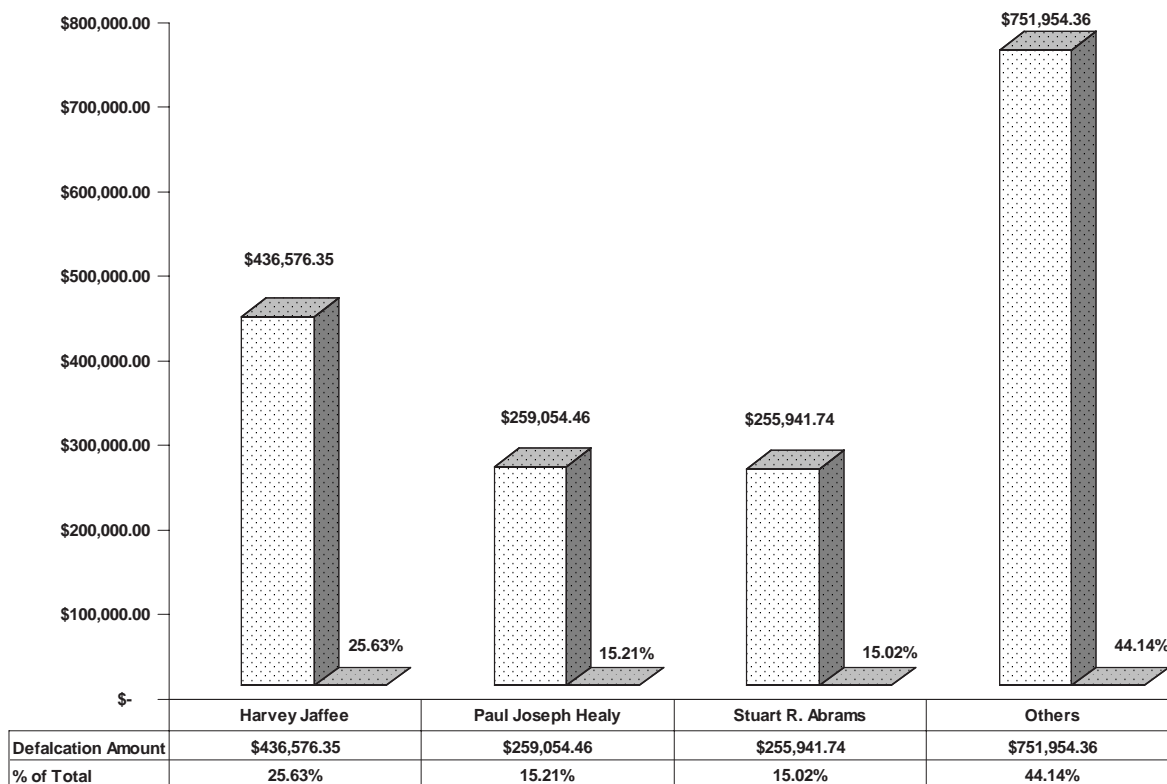
AWARDS

During fiscal 2006, the Board awarded \$1,653,026.91 to forty-two claimants, marking the second consecutive year of declines in the total amount awarded and in the total number of recipients. When compared to fiscal 2005 that produced fifty-five awards totaling \$2,203,527, fiscal 2006 trailed by 25% (\$550,500) in the total amount awarded and by 24.6% (13) in the total number of recipients. One would have to go back to 1991 to find a lower number of total recipients (35). As is often the case, very few lawyers were responsible for the majority of the total amount awarded. Three lawyers accounted for \$951,572.55 or 55.57% of the total amount awarded. Twenty-three lawyers accounted for the other 44.43%, or \$701,454.36. Five of twenty-six lawyers were deceased. The smallest individual award was \$450 paid on behalf of Joseph Runci (deceased) and the largest was \$436,575.35 paid to three siblings because of the defalcation of Harvey Jaffee (disbarred and deceased).

LARGEST DEFALCATIONS

Three lawyers generated awards exceeding \$250,000 (individually or in the aggregate) during fiscal 2006. For details, please see Chart 1, below, and Table 2 on the next page.

CHART 1: Lawyers with Highest Defalcation for FY 2006



**TABLE 2: Total Awards by Disciplined or Deceased Attorney
(September 1, 2005-August 31, 2006)**

| Name | Town | County | No. of Awards | Defalcation | Total Awarded |
|-----------------------|------------------|------------|---------------|-----------------|-----------------|
| Harvey Jaffee | Lynnfield | Essex | 1 | \$ 436,576.35 | \$ 436,576.35 |
| Paul Joseph Healy | Rockland | Plymouth | 4 | \$ 259,054.46 | \$ 259,054.46 |
| Stuart Abrams | Gloucester | Essex | 1 | \$ 255,941.74 | \$ 255,941.74 |
| Anthony Raoul Bott | East Orleans | Barnstable | 3 | \$ 176,666.70 | \$ 126,666.70 |
| Maureen Andricopoulos | Tewksbury | Middlesex | 2 | \$ 154,205.00 | \$ 153,705.00 |
| Edward O'Connell | Cambridge | Middlesex | 2 | \$ 72,054.30 | \$ 72,054.30 |
| John McBride | Marblehead | Essex | 7 | \$ 66,866.67 | \$ 66,866.67 |
| Elizabeth Ann Wolfe | Boston | Suffolk | 1 | \$ 57,344.75 | \$ 57,344.75 |
| Scott Geller | Peabody | Essex | 1 | \$ 40,162.25 | \$ 40,162.25 |
| Morris Goldings | Chestnut Hill | Middlesex | 1 | \$ 40,000.00 | \$ 40,000.00 |
| David A. Kiernan | Chelmsford | Middlesex | 1 | \$ 28,500.00 | \$ 28,500.00 |
| Thomas Broderick | Lynnfield | Essex | 1 | \$ 20,000.00 | \$ 20,000.00 |
| Marvin Wolfert | Foxboro | Norfolk | 2 | \$ 17,000.00 | \$ 17,000.00 |
| Gary Meyers | Brookline | Norfolk | 1 | \$ 13,000.00 | \$ 13,000.00 |
| Stephen Maloney | Canton | Norfolk | 3 | \$ 12,985.00 | \$ 12,985.00 |
| Neil Robert Cola | Chelsea | Suffolk | 1 | \$ 11,458.52 | \$ 11,458.52 |
| Barbara A.H. Smith | Norwell | Plymouth | 1 | \$ 10,000.00 | \$ 10,000.00 |
| Bruce Rosen | Providence, R.I. | | 1 | \$ 10,000.00 | \$ 10,000.00 |
| Richard Howarth | Providence, R.I. | | 1 | \$ 4,985.00 | \$ 4,985.00 |
| Robert Erwin Silver | West Newton | Middlesex | 1 | \$ 3,950.00 | \$ 3,950.00 |
| Matthew Cobb | Acton | Middlesex | 1 | \$ 3,471.16 | \$ 3,471.16 |
| Francis Jackman | South Boston | Suffolk | 1 | \$ 2,667.00 | \$ 2,667.00 |
| Gerald Shayavitz | Haverhill | Essex | 1 | \$ 2,603.01 | \$ 2,603.01 |
| Michael Cruz | Springfield | Hampden | 1 | \$ 2,385.00 | \$ 2,385.00 |
| Kristjan Asgeirsson | Stoneham | Middlesex | 1 | \$ 1,200.00 | \$ 1,200.00 |
| Joseph Runci | Sandwich | Barnstable | 1 | \$ 450.00 | \$ 450.00 |
| Total | | | 42 | \$ 1,703,526.91 | \$ 1,653,026.91 |

Harvey Jaffee, formerly of Lynnfield, MA, disbarred and now deceased, once represented a successful entrepreneur and his corporation and was the co-trustee of the entrepreneur's *inter vivos* trust and co-executor of his will. The entrepreneur was the father of three children and was divorced from the children's mother. The father died quite unexpectedly in 1986. When Mr. Jaffee tendered the 1982 will for probate, he failed to disclose to the court that the father's 1983 marriage revoked, by operation of law, his 1982 will leaving all of his assets to the trust. As a consequence, the trust was funded and Jaffee systematically plundered its assets while threatening the young-adult children with disinheritance (under the "no-contest" clauses of the will and the trust) whenever they sought to get an accounting. During his disciplinary proceedings Mr. Jaffee admitted to stealing not less than \$436,575.35. Bitter, prolonged and expensive litigation ended

when Mr. Jaffee died penniless. The Board's award of \$145,525.11 to each of the three siblings, helped to reunite them after years of estrangement.

Paul Joseph Healy, formerly of Rockland, MA, was a recently admitted lawyer, when, in 1989 his small-firm colleagues designated him to serve as co-trustee of three trusts prepared by deceased or retired senior members of the firm going back to 1961. With the influence and oversight of the senior members gone, Mr. Healy promptly transferred trust assets to three brokerage accounts on which he had check writing authority and, between 2000 and 2004, gave himself more than \$250,000.

In 1999 **Stuart Abrams** assisted a client in the sale of a piece of commercial real estate that produced a profit of \$329,682.39. Mr. Abrams informed his client of the tax deferral provisions of § 1031 of the Internal Revenue Code and explained that he would hold the proceeds as a "qualified intermediary" until the client located a different property in which to reinvest the proceeds. Mr. Abrams distributed more than \$72,000 to his client in two installments while finding fault with each property his client wished to purchase and urging him to wait for the "right one." This enabled Mr. Abrams to use more than \$255,000 for his own benefit.

AWARDS BY CATEGORY

The *Unearned Retainer* category once again generated the most awards, 19 or 45.24% of the total but only 14.91% (\$246,433.42) of the total dollars awarded and 14.47% (\$246,433.42) of the total defalcation. The highest dollar amount paid out was in the Trusts and Estates category, \$960,348.60 representing 58.10% of the total. Table 3 below details the distribution in the various categories.

TABLE 3: Award Categories

| Category | No. of Awards | % of Total Awards | Total Awarded | % Total \$\$ Awarded | Total Defalcation | % of Total Defalcation |
|----------------------------|---------------|-------------------|------------------------|----------------------|------------------------|------------------------|
| Investment | 1 | 2.38% | \$ 40,000.00 | 2.42% | \$ 40,000.00 | 2.35% |
| Trusts & Estates | 5 | 11.90% | \$ 960,348.60 | 58.10% | \$ 960,348.60 | 56.37% |
| Fiduciary | 5 | 11.90% | \$ 157,755.46 | 9.54% | \$ 157,755.46 | 9.26% |
| Real Estate | 4 | 9.52% | \$ 72,912.25 | 4.41% | \$ 73,412.25 | 4.31% |
| Settlement | 2 | 4.76% | \$ 15,603.01 | 0.94% | \$ 15,603.01 | 0.92% |
| Personal Injury Settlement | 6 | 14.29% | \$ 159,974.17 | 9.68% | \$ 209,974.17 | 12.33% |
| Unearned Retainer | 19 | 45.24% | \$ 246,433.42 | 14.91% | \$ 246,433.42 | 14.47% |
| Total | 42 | 100.00% | \$ 1,653,026.91 | 100.00% | \$ 1,703,526.91 | 100.00% |

INVESTMENTS

During the course of a lawyer-client relationship, the lawyer undertakes to invest the client's funds but instead uses the funds for the lawyer's own benefit.

The sole award in this category involves the misconduct of **Morris M. Goldings**. Claimant had a 40-year relationship with Goldings, who handled an array of legal work for claimant, including real estate trusts and real estate investments. In 1995, claimant made a personal loan to Goldings to purchase a condominium. Goldings was to assign his annuity as security for repayment of the loan, which paid 12% interest. He was also responsible for perfecting the collateral assignment of the annuity. Claimant later discovered that the issuer of Goldings' annuity paid a bank in Florida a sum of money based on the bank's 1996 collateral assignment of Goldings' annuity. Because of extenuating circumstances, the Board awarded claimant only one-half of Mr. Goldings' defalcation.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|--------------------|---------------|-----------------------|--------------------|
| Morris M. Goldings | 1 | \$ 40,000.00 | 100.00% |
| Total | 1 | \$ 40,000.00 | 100.00% |

TRUSTS AND ESTATES

The misappropriation of money or other assets, intended for the heirs, beneficiaries or a trust, by an attorney serving as trustee, executor or counsel to the executor or trustee.

Highlights of claims relating to **Paul Healy, Stuart Abrams** and **Harvey Jaffee** are discussed in detail under "Largest Defalcations" (pp. 7-9).

The Board found that **Neil Cola** stole \$89,595.76 from the estate of claimant's mother but made no award because the entire amount would have gone to satisfy a Medicaid claim against the estate. Subsequently, the Massachusetts Division of Medical Assistance waived a portion of its claim that represented expenses of the executor in the amount of \$11,458.52. Upon reconsideration, and after reviewing the DMA waiver, the Board awarded \$11,458.52 to claimant as executor of his mother's estate.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|-------------------|---------------|-----------------------|--------------------|
| Neil Robert Cola | 1 | \$ 11,458.52 | 1.19% |
| Paul Joseph Healy | 2 | \$ 256,371.99 | 26.70% |
| Stuart R. Abrams | 1 | \$ 255,941.74 | 26.65% |
| Harvey Jaffee | 1 | \$ 436,576.35 | 45.46% |
| Total | 5 | \$ 960,348.60 | 100.00% |

REAL ESTATE

Misappropriation of deposits, escrows or sale proceeds in real estate transactions.

Scott Geller represented a home buyer, who gave an \$8,500 deposit to the seller's real estate broker. When seller refused to close on the sale, claimant-buyer authorized Geller to sue for breach of contract. Both parties agreed that Geller would hold the \$8,500 in escrow.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|--------------------------|---------------|-----------------------|--------------------|
| Marvin L. Wolfert | 2 | \$ 17,000.00 | 23.32% |
| Maureen V. Andricopoulos | 1 | \$ 15,750.00 | 21.60% |
| Scott L. Geller | 1 | \$ 40,162.25 | 55.08% |
| Total | 4 | \$ 72,912.25 | 100.00% |

The matter settled for \$48,000 which Geller held in his IOLTA account. Geller returned the \$8,500 to claimant, but only after the first check bounced. Geller took his \$7,837.75 fee from the \$48,000 but never paid the balance (\$40,162.25) to claimant.

Marvin Wolfert's client hired him to create a trust to take title to a piece of real estate. Claimant paid Wolfert \$931 in legal fees for that work and gave him an additional \$6,000 to deliver to the seller at closing. Neither Wolfert nor the \$6,000 appeared at the closing. In another matter, the claimant-sellers sold their home to co-claimant buyer, represented by Mr. Wolfert, who agreed to manage a post-closing escrow account to pay assorted expenses and sewer assessments that were sellers' responsibility. Any remainder was to be paid to the claimant-sellers. The claimant-sellers obtained permission from claimant-buyer for Mr. Wolfert to pay the sewer assessments of \$8,871 and to pay the remainder (\$2,129) to them. Because Mr. Wolfert spent all of the escrowed funds for his own purposes, claimant-buyer had to pay the sewer betterment fee out of his own pocket and claimant-sellers never received their balance.

Maureen Andricopoulos represented the sellers of a house. She volunteered to hold the deposit of \$16,250 citing that it would be 'safer' with her than the real estate broker. After closing, the claimant-sellers received the proceeds less the \$16,250 deposit. When Andricopoulos finally repaid claimants, the check bounced. The Board awarded \$15,750, net of legal fees.

FIDUCIARY

The misuse of funds held by an attorney acting as a fiduciary where there is an attorney-client relationship.

Maureen V. Andricopoulos of Lowell, MA agreed to manage the financial affairs of a former boxer, now a boxing trainer, and a childhood friend of hers. Claimant transferred \$188,292.72 to Andricopoulos so that she could pay his bills, taxes, and give him periodic allowances. Andricopoulos used \$137,955 of those funds to pay for her own business and personal expenses.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|--------------------------|---------------|--------------------------|-----------------------|
| Bruce G. Rosen | 1 | \$ 10,000.00 | 6.34% |
| Matthew Cobb | 1 | \$ 3,471.16 | 2.20% |
| Maureen V. Andricopoulos | 1 | \$ 137,955.00 | 87.45% |
| Stephen C. Maloney | 1 | \$ 4,275.00 | 2.71% |
| Edward J. O'Connell | 1 | \$ 2,054.30 | 1.30% |
| Total | 5 | \$ 157,755.46 | 100.00% |

Bruce Rosen forged a \$20,000 personal injury settlement check received from an insurer on behalf of claimant's minor daughter who was injured in an automobile accident. Rosen took a fee of 1/3, gave claimant \$3,333.33 and convinced claimant that he had used the remaining \$10,000 to purchase an annuity, payable at age 18, for the minor daughter. In fact, Rosen stole the \$10,000 and used it for his own benefit.

A complete description of case summaries for the Fiscal Year 2006 can be found on our web site at www.mass.gov/clientssecurityboard

UNEARNED RETAINER

Client money accepted by an attorney who failed to perform the agreed upon legal services. These claims should not be confused with fee disputes or malpractice claims where an attorney negligently performs legal services causing financial loss to a client.

Claimant hired **Edward J. O'Connell** to defend a Land Court law suit brought by claimant's neighbor for allegedly violating zoning laws after adding a widow's walk on his home. Claimant gave O'Connell \$80,000 to pay for legal fees, pay for any repair, renovation, reconstruction, and the like to the premises if ordered by the Land Court, and to pay for the completion of plastering and painting the interior walls. O'Connell returned \$10,000 to claimant but never accounted for the remaining \$70,000.00.

Elizabeth Ann Wolfe was hired by claimant, a Florida resident, to sue for wrongful termination from her job. Wolfe was a Massachusetts lawyer who operated a virtual office in Florida. Wolfe was paid a \$20,000 non-refundable retainer, \$7,344.75 in costs, and a total of \$80,000 in expert witnesses fees. Claimant's sole meeting with Wolfe was at a mediation session where there was an \$150,000 settlement offer that claimant flatly rejected after learning that the check would be made payable to Wolfe. Claimant dismissed Wolfe and hired new counsel and received a net settlement of \$144,000. The Board found that Wolfe stole \$57,344.75 and awarded that amount.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|------------------------|---------------|-----------------------|--------------------|
| Joseph R. Runci | 1 | \$ 450.00 | 0.18% |
| Elizabeth Ann Wolfe | 1 | \$ 57,344.75 | 23.27% |
| Richard R. Howarth | 1 | \$ 4,985.00 | 2.02% |
| John C. McBride | 7 | \$ 66,866.67 | 27.13% |
| Stephen C. Maloney | 2 | \$ 8,710.00 | 3.53% |
| Barbara A.H. Smith | 1 | \$ 10,000.00 | 4.06% |
| Thomas F. Broderick | 1 | \$ 20,000.00 | 8.12% |
| Kristjan A. Asgeirsson | 1 | \$ 1,200.00 | 0.49% |
| Michael J. Cruz | 1 | \$ 2,385.00 | 0.97% |
| Robert Irwin Silver | 1 | \$ 3,950.00 | 1.60% |
| Paul Joseph Healy | 1 | \$ 542.00 | 0.22% |
| Edward J. O'Connell | 1 | \$ 70,000.00 | 28.41% |
| Total | 19 | \$ 246,433.42 | 100.00% |

John C. McBride, a criminal lawyer with over 25 years of experience, was responsible for seven awards in this category totalling \$66,866.67. There was no established pattern in the way McBride took money from his clients. In one instance, McBride took \$15,000 and filed his appearance on behalf of claimant, never showed for hearings, and forced claimant to hire substitute counsel. In two other instances, claimants paid McBride to defend civil forfeiture actions. McBride settled the forfeiture actions without his clients' knowledge or consent and pocketed the money despite the fact that he already received legal fees for the actions. For three other matters, McBride was already deeply into the disciplinary process when he took fees for work he knew he could not do. One other claim related to McBride not returning legal fees in which there was a conflict of interest.

SETTLEMENT**Misappropriation of proceeds from the settlement of personal injury matters or other litigation.***Litigation*

Gary Meyers represented the claimant who was the CEO of a small company. The claimant gave Meyers two checks totalling \$23,000. Meyers paid \$10,000 to a former employee who had sued the company, and failed to account for the other \$13,000.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|-----------------|---------------|-----------------------|--------------------|
| Gary Meyers | 1 | \$ 13,000.00 | 83.32% |
| Gerald Shyavitz | 1 | \$ 2,603.01 | 16.68% |
| Total | 2 | \$ 15,603.01 | 100.00% |

Personal Injury Settlements

David Kiernan, now deceased, represented a disabled Vietnam veteran who sustained injuries while a patient at a VA hospital. Kiernan received a \$50,000 settlement. VA rules permitted Kiernan to take 20% of that amount for fees and expenses. Kiernan lied to claimant when he told him that the VA would pay the settlement in installments over several years. Claimant received only \$18,000 out of the remaining \$40,000.

| Attorney | No. of Awards | Total Award/ Attorney | % of Total Awarded |
|--------------------|---------------|-----------------------|--------------------|
| David A. Kiernan | 1 | \$ 28,500.00 | 17.82% |
| Francis X. Jackman | 1 | \$ 2,667.00 | 1.67% |
| Paul J. Healy | 1 | \$ 2,140.47 | 1.34% |
| Anthony Raoul Bott | 3 | \$ 126,666.70 | 79.18% |
| Total | 6 | \$ 159,974.17 | 100.00% |

Anthony Raoul Bott from Orleans, Barnstable County accounted for three awards totalling \$126,666.70. All three claims involved personal injury settlements. Bott's *modus operandi* was to settle insurance claims without his clients' knowledge, forge his clients' signatures on releases and settlement checks, cash the checks and convert the funds to his own use while telling claimants that he was still working on these matters. Bott pled guilty in the Barnstable Superior Court to seven counts of larceny over \$250, five counts of larceny over \$250 from a person 60 years of age or older, and three counts of forgery. He is now serving 2 1/2 years in the House of Corrections.

TABLE 4: Dismissals

| CATEGORY | # CLAIMS | % of Total Dismissed | Amount \$ Claimed | % of Total \$ Dismissed |
|---------------------------------|-----------------|---------------------------------|------------------------------|------------------------------------|
| Third-Party Recovery | 7 | 13.73% | \$ 11,412.94 | 0.36% |
| Fee Dispute | 12 | 23.53% | \$ 288,755.00 | 9.22% |
| Attorney Negligence/Malpractice | 1 | 1.96% | \$ 510,000.00 | 16.28% |
| Restitution | 3 | 5.88% | \$ 13,083.00 | 0.42% |
| Voluntary Withdrawal | 2 | 3.92% | \$ 652,522.42 | 20.83% |
| No Attorney-Client Relationship | 2 | 3.92% | \$ 57,743.00 | 1.84% |
| Insufficient Data | 4 | 7.84% | \$ 30,002.00 | 0.96% |
| No Defalcation | 20 | 39.22% | \$ 1,568,695.75 | 50.08% |
| Total | 51 | 100.00% | \$ 3,132,214.11 | 100.00% |

DISMISSALS

Table 4 categorizes the dismissed claims and shows the amounts for each category. For the third time since 1975, the number of claims dismissed totaled more than 50. Out of the 93 claims decided this year, more than half, 51 or 54.84%, were dismissed totaling \$3.1 million dollars. The Board found no evidence of lawyers' theft in 20 instances (39.22% or \$1.56M). Six of these were attributed to John C. McBride. Twelve dismissals (23.53% or \$288,755.00) were categorized as fee disputes, in which case the Board advised claimants to seek redress through the Massachusetts Bar Association's Fee Arbitration program. Ten of these were attributed to John C. McBride. Seven claims (13.73% or \$11,412.94) were dismissed because of third-party recoveries, six of which were allocated to deceased attorney Madeline McLaughlin Corey whose estate paid the claims. Although only 3.92% of the total dismissed, two claimants voluntarily withdrew their claims totalling \$652,522.42 and one claim for \$510,000 (1.96%) was dismissed because it was based on a theory of legal malpractice, not defalcation.

Table 5 reflects a further refinement of dismissals showing for each disciplined attorney which claims were denied and the reasons. In three instances, the disciplined attorneys paid back a total of \$13,083.00 before their claims went to hearing.



**INFORMATION ON FILING A CLAIM
FOR REIMBURSEMENT**

CAN BE FOUND AT

Website: www.mass.gov/ClientsSecurityBoard

Office: Clients' Security Board, 2nd Floor,

99 High Street, Boston, MA 02110

Telephone: 617-728-8700

TABLE 5: Dismissed Claims by Disciplined Attorney

| Disciplined Attorney | No. of Claims Dismissed | Basis of Claim | Reason for Dismissal |
|---|-------------------------|----------------|-----------------------------------|
| Martin D. Boudreau | 1 | UNRET | Fee Dispute |
| F. Lee Bailey | 1 | UNRET | Fee Dispute |
| Kevin F. Carney | 1 | UNRET | Restitution by Attorney |
| Jon F. Conant | 1 | RE | No Defalcation/Theft |
| Madeline McLaughlin Corey | 6 | UNRET | Third Party Recovery |
| James C. Dragon | 1 | UNRET | Failure to Produce Data |
| Robert Edward Duerr | 1 | UNRET | No Defalcation/Theft |
| Morris M. Goldings | 1 | UNRET | Attorney's Negligence/Malpractice |
| Kenneth E.F. Howes | 1 | SETT | No Defalcation/Theft |
| Richard N. Ivker | 1 | UNRET | No Defalcation/Theft |
| | 1 | UNRET | Restitution by Attorney |
| Francis Kelley Landolphi | 1 | RE | No Defalcation/Theft |
| Raymond Lantz | 1 | UNRET | No Defalcation/Theft |
| Eric L. Levine | 1 | UNRET | Voluntary Withdrawal |
| David M. Lipton | 2 | UNRET | No Defalcation/Theft |
| John C. McBride | 6 | UNRET | No Defalcation/Theft |
| | 10 | UNRET | Fee Dispute |
| Michael D. McDonald | 1 | INV | Voluntary Withdrawal |
| Gary Meyers | 1 | UNRET | Failure to Produce Data |
| Paul B. Morley | 1 | TE | No Defalcation/Theft |
| William Kenneth O'Donnell | 1 | UNRET | No Defalcation/Theft |
| William E. O'Keefe | 1 | SETT | Third Party Recovery |
| William Francis Scannell | 1 | UNRET | Restitution by Attorney |
| Gerald Shyavitz | 3 | PISETT | No Defalcation/Theft |
| | 1 | UNRET | No Defalcation/Theft |
| John P. Shyavitz | 1 | UNRET | No attorney-client Relationship |
| Maureen J. Sullivan | 1 | RE | No attorney-client Relationship |
| Richard H. Wynn | 2 | PISETT | Failure to Produce Data |
| Total | 51 | | |
| SETT-Settlement Proceeds; PISETT-Personal Injury Settlement; UNRET-Unearned Retainer; FID-Fiduciary Funds; INV-Investment; RE-Real Estate Funds; TE - Trustee; BANKR - Bankruptcy | | | |

RESTITUTION

This fiscal year, the Clients' Security Board received \$144,819.91 in restitution payments as follows:

| | |
|-------------------------------------|--------------|
| Court Ordered: | \$ 25,886.17 |
| Voluntary | \$ 5,033.74 |
| Other payments (e.g., subrogation): | \$113,900.00 |

PENDING CLAIMS

At the end of fiscal year 2006, there were 107 pending claims totalling \$17,388,605.51. **Morris M. Goldings'** claims total over \$7.7M or 44.50% of claims still to be heard. **Richard Birchall** of Orleans, MA, accounts for \$2.1M or 12.08% of pending claims, **Jon Conant**, formerly of Gloucester, MA, \$1.0M or 5.80%, and **Gerard Battista** of Norwell, MA, \$928,046.37 or 5.34% of total pending claims.

Table 6 below shows an analysis of pending claims. Although the "Unearned Retainer" category has the most claims, it accounts for only 1.09% or \$189,035 of the total claims. The largest dollar amounts of claims are found in the categories Trust & Estates (\$6,974,330.24 - 40.11%) and Fiduciary (\$6,051,105.26 - 34.8%).

TABLE 6: Analysis of Claims Pending as of 8/31/06

| BASIS | # OF CLAIMS PENDING | % OF TOTAL CLAIMS PENDING | \$ TOTAL CLAIMS | % OF TOTAL \$ IN PENDING CLAIMS |
|--------------------------------|------------------------|---------------------------------|------------------|---------------------------------------|
| Bankruptcy | 2 | 1.87% | \$ 2,687,102.67 | 15.45% |
| Fiduciary | 9 | 8.41% | \$ 6,051,105.26 | 34.80% |
| Investments | 1 | 0.93% | \$ 35,000.00 | 0.20% |
| Fee Dispute | 1 | 0.93% | \$ 12,000.00 | 0.07% |
| Real Estate | 19 | 17.76% | \$ 941,622.74 | 5.42% |
| Settlement | 9 | 8.41% | \$ 200,611.89 | 1.15% |
| Personal Injury Settlements | 16 | 14.95% | \$ 297,798.71 | 1.71% |
| Trusts & Estates | 11 | 10.28% | \$ 6,974,330.24 | 40.11% |
| Unearned Retainer | 39 | 36.45% | \$ 189,035.00 | 1.09% |
| Total | 107 | 100.00% | \$ 17,388,606.51 | 100.00% |

PROMOTIONAL ACTIVITIES

In the previous years, distribution of Board publicity materials suffered as industry consolidation steadily reduced the number of community daily and weekly newspapers. This year, to confront that challenge and to continue to educate the public about Board services, an additional 340 notices went to Town and City Halls throughout Massachusetts. Total distribution for 2005 was 2,600 mailings, topping 2004's mailing of 2,000 by 30% and 2003's mailings of 1,200 by more than 100%! Special efforts were made to locate and mail this report to foreign language newspapers, focusing on the Portuguese, Spanish, Chinese, Vietnamese, Haitian, and South Asian communities. Mailings continue to target local bar associations, pro bono lawyers who represented claimants before the Board, IOLTA banks, other client protection agencies, libraries (law schools, academic institutions, social law and court libraries, public and community libraries), media - cur-

rent major, local, and community newspapers, TV and radio stations, Massachusetts courts, District Attorneys and other law enforcement departments, legal aid and other pro bono law clinics, and private and governmental agencies that assist the poor.

MEDIA PUBLICITY

"Supreme Judicial Court Justice Francis X. Spina to Present Clients' Security Board's William J. LeDoux Award to Two Attorneys," Public Information Office of the Supreme Judicial Court, <http://www.Mass.Gov/Courts/Press/Pr092105.Html>.

"Payee Notification Rule Concerns Bristol Bar Group," Massachusetts Lawyers Weekly, Letters to The Editor, March 27, 2006.

"The Sordid Tale of 'Attorney Thai,'" Massachusetts LAWYERS WEEKLY, Vol. 34, Issue No. 12, November 14, 2005, pp. 1, 24-25.

"Clients' Security Board: 4 Decades of Cleansing Profession's Reputation," Andrea R. Barter, Esq., Massachusetts Bar Association LAWYERS JOURNAL, Volume 13, Number 6, February 2006, pp. 1 & 6-7.

"Three Lawyers Tied to Bulk of Fraud Restitution - More Than \$2m Paid to Clients," Jonathan Saltzman, Globe Staff, Boston Globe, March 2, 2006, Boston, MA. http://www.boston.com/news/local/articles/2006/03/02/three_law-yers_tied_to_bulk_of_fraud_restitution/

"Lawless Lawyers," Emelie Rutherford, Daily News Staff, Friday, March 3, 2006, <http://www.metrowestdaily-news.com>, Framingham, MA.

"Fitzgerald Announces Task Force After HOD Debate," LAWYERS JOURNAL, Massachusetts Bar Association, May, 01, 2006, <http://www.massbar.org/publications/lawyersjournal>.

"A Remedy for Crooked Lawyers," Wavemaker, Wednesday, May 03, 2006. <http://screenshotblog.blogspot.com/2006/05remedy-for-crooked-lawyers.html>.

"Rule Aims to Halt Theft by Lawyers." Sacha Pfeiffer, The Boston Globe, Business Section, P. C1, May 3, 2006.

"Client Consumer Protection: Payee Notification Laws," Walter Olson, PointofLaw.com, May 18, 2006. <http://www.pointoflaw.com/archives/002506.php>

CLIENTS' SECURITY BOARD MEMBERS

John R. Gobel, Esq., a Board member since November 9, 2001, has been appointed Chair of the Board effective December 2004. He is a partner in the law firm Gobel & Hollister in Pittsfield, Massachusetts, where he is engaged in the general practice of law. Mr. Gobel is a former lecturer at the Berkshire Community College, the Paralegal Institute, and the Massachusetts Bar Association's Continuing Legal Education Program. He is also a former Chair of the Probate Court Committee of the Berkshire County Bar Association.



Peter G. DeGelleke, Esq., a Board member December 2003, has been appointed Vice Chair of the board effective December 2004. He is a sole practitioner who specializes in criminal and civil litigation and corporate risk management. His office is in Concord, Massachusetts, where he is of counsel to the firm of McWalter, Barron & Boisvert. Admitted to the Bar in 1977 after graduating from Georgetown Law School, Mr. DeGelleke served two terms as a Hearing Officer for the Board of Bar Overseers, serves as an arbitrator for the Massachusetts Bar Association Fee Arbitration Board, and teaches trial advocacy in the Harvard Law School Trial Advocacy Workshop. A member of the Association of Trial Lawyers of America (ATLA), he provided pro bono representation to the family of a September 11 victim in making a claim with the Victim Compensation Fund as part of the Trial Lawyers Care program.



Lucy W. West, Esq., the Treasurer and a Board member since December 1, 2002, is a partner at Rackemann, Sawyer & Brewster of Boston and Wellesley, where she concentrates in estate planning and the administration of estates and trusts. Ms. West began her legal career as a staff attorney at the U.S. Court of Appeals for the First Circuit, and has been in private practice ever since. Elected to the American College of Trust & Estate Counsel, she is past Moderator and Program Chair of the Boston Probate & Estate Planning Forum and past Chair of the New Developments Committee of the Boston Bar Association Trusts & Estates Section.



Guy B. Moss, Esq., a Board member since December 1, 2002, is a partner in the law firm of Bingham McCutchen LLP in Boston, where he concentrates on bankruptcy law, creditors' rights and commercial law. A Fellow of the American College of Bankruptcy, Mr. Moss is an active member of the Boston, Massachusetts and American Bar Associations, and the American Bankruptcy Institute, as well as a frequent author and lecturer in his field.



Kathryn A. O'Leary, Esq., a Board member since December 2004, is a trial attorney with the Worcester law firm of Gould & Ettenberg, P.C. since 1997. After graduating from Suffolk University Law School, she worked with Madan and Madan and the Boston office of Day, Berry & Howard. She is a member of the Worcester County Bar Association, Senior Women's Practice Group, and the Concord Attorney Round Table and has participated as a volunteer in the Suffolk and Middlesex County Bench/Bar Committees and the First Circuit Gender and Ethnic Bias Study. Ms. O'Leary is the president of Women's Hoop Dreams, Inc. and plays competitive women's basketball.



CLIENTS' SECURITY BOARD MEMBERS

Pamela Jeanne Koehr, Esq., a Board member since December 1, 2004, serves as the Attorney General's designee on the Board of Appeal on Motor Vehicle Liability Policies and Bonds. Prior to her present position, she managed a general law practice in Lexington for 15 years. From 1997 until 2004, she served as a hearing officer

for the Board of Bar Overseers. Ms. Koehr received her undergraduate degree from Chaminade University (Hawaii) and her J.D. from New England School of Law. She is a member of the Massachusetts Bar Association, the Middlesex County Bar Advocates and also serves as a trial advisor to the Trial Advocacy Workshop at Harvard Law School.



Thomas O. Bean, Esq., a Board member since November 1, 2005, is a partner in the law firm of McDermott, Will & Emery LLP where he focuses his practice on bankruptcy and commercial litigation. From 1992 through 1998, he served as a Massachusetts Assistant Attorney General in the Government Bureau. He co-chaired the Bankruptcy Section of the Boston Bar Association from 2002 to 2004. He is a member of the American Bankruptcy Institute and a frequent lecturer on bankruptcy topics. Prior to his present position, he was a partner in the law firm of Nutter, McClennen & Fish, LLP in Boston for seven years. He began his legal career at Brown, Rudnick, Freed & Gesmer in 1986.



CLIENTS' SECURITY BOARD COUNSEL

Michael Fredrickson, Esq., is counsel to the Clients' Security Board. He received his bachelor's degree in English from Macalester College, attended Oxford University as a Rhodes Scholar, and did graduate work in English literature at the University of Toronto. After receiving his law degree from Harvard Law School, he worked for over five years as an associate at the Boston law firm of Hill & Barlow before taking his present position with the Clients' Security Board. He also serves as general counsel to the Board of Bar Overseers, the state's lawyer disciplinary agency.



Karen D. O'Toole, Esq., has been the assistant board counsel to the Clients' Security Board and the associate general counsel to the Board of Bar Overseers since 1989. From 1986 until 1989, Ms. O'Toole was an associate at the law firm of Hoch & McHugh in Boston practicing maritime law. She received her B.A. from Carnegie-Mellon University, her M.S.W. from the University of Michigan and her J.D. from Northeastern University.



Adam M. Lutynski, Esq., became assistant board counsel in 2002 after fourteen years as general counsel and secretary to an NYSE-listed technology solutions company. He is also a former public defender, legal aid lawyer and law school instructor. B.S., Loyola University (Chicago) - J.D., University of Chicago Law School.



ATTORNEYS WHO REPRESENTED CLAIMANTS IN CASES ADJUDICATED BY THE
CLIENTS' SECURITY BOARD DURING THE PERIOD 9/1/2005-8/31/2006

The Board is pleased to publicly acknowledge and thank the following lawyers who generously contributed their time and talents during FY 2006 to represent claimants before the Board for which, by Court rule, they may not receive compensation.

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Chattanooga, TN 37404

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MASSACHUSETTS CLIENTS' SECURITY BOARD OF THE SUPREME JUDICIAL COURT

99 HIGH STREET * BOSTON, MA 02110-2320 * TEL: 617-728-8700 * FAX: 617-482-8000

WEB SITE: [HTTP://WWW.MASS.GOV/CLIENTSSECURITYBOARD](http://www.mass.gov/clientssecurityboard)